IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.23331 OF 2006

G.Malathy .. Petitioner

vs.

1. The State of Tamilnadu,
   rep. by its Secretary,
   Health, Indian Medicine,
   Homeopathy and Family
   Welfare Department,
   Namakkal Kavingnar Buildings,
   Fourth Floor, Secretariat,
   Fort St. George, Chennai - 600 009.

2. The Director of Indian,
   Medicine and Homeopathy,
   Aringnar Anna Hospital for
   Indian Medicine Campus,
   Arumbakkam, Chennai.

3. The Secretary to Government,
   Labour, Employment and
   Training, Government of Tamilnadu,
   Namakkal Kavingnar Buildings,
   Secretariate, Fort St. George,
   Chennai - 600 009.

4. The Director,
   Employment and Training,
   Ezhilagam, Chepuak, Chennai - 600 005.

5. District Employment Officer,
   (Technical)
   Jayaprakash Narain Buildings,
   III Floor, Kuil Thottam,
   Slum Clearance Board Buildings,
   Santhome High Road, Mylapore,
   Chennai - 4.

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6. Tamil Nadu India Systems of Medicine
Pharmacist council,
No.39, Madha Building,
Main Road, Dindigul,
rep. by its Special Treasurer,
Mr.R.Sakthivel .. Respondents

R6 impleaded as per order dated 06.12.2006 by MJJ in MP.No.2/06 in WP.23331/06.

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to adopt and carryout the recruitment for Pharmacist in Siddha Medicine in accordance to the Employment Office (Technical) Santhome, Chennai - 4, right from the day one of the counseling for recruitment and postings.

For petitioner : Mr.P.C.N.Raghupathy

For respondents : Mr.C.Thirumaran
Government Advocate
for R1 to R5
M/s.Malarvizhi Udayakumar
for R6

O R D E R

The writ petition has been filed for the issuance of a writ of Mandamus to adopt and carryout the recruitment for Pharmacists in Siddha Medicine in accordance to the Employment Seniority maintained by the District Employment Office (Technical), Chennai.

The brief facts of the case, as stated by the petitioner, are as follows:

2. The petitioner, after having completed her S.S.L.C. Course, had registered with the District Employment Exchange with general qualifications. Later, she had also done her graduation and registered the additional qualifications in the same Registration No.W/8509/90. The petitioner had also qualified herself for Diploma in Pharmacy in Indian Systems of Medicine (Siddha) in the year 1994, with distinction. The Course period was from 1992 to 1994. After completing the Diploma in Pharmacy in Siddha medicine, she had approached the Employment Office for registration. She had registered her name in the District Employment Office (Technical) in Chennai during the year 1996 and had renewed the same upto the year 2008 with the Register No.EW/14/96, dated 5.1.1996.

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3. The Director of Indian Medicine and Homeopathy had proceeded to make appointments in an arbitrary and illegal manner, by way of counseling, without calling for candidates from the Directorate of Employment or the District Employment (Technical). The petitioner claims that the recruitment for the Government Departments should be by the Tamil Nadu Public Service Commission after issuing Public Notification and Advertisement in the Media calling for applications from the qualified candidates eligible for such recruitments or through the Employment Exchanges in accordance with their seniority.

4. At the stage of the hearing of the writ petition, the Tamil Nadu Indian Systems of Medicine Pharmacist Council has been impleaded as the sixth respondent in the writ petition.

5. In the affidavit filed on behalf of the sixth respondent, it has been stated that the sixth respondent Association, which is a registered Association, has been formed with the object of protecting the interest of the members of the Association, who are all qualified with Diploma in Pharmacy in Indian Systems of Medicines (Siddha). The sixth respondent has sought for appropriate directions from this Court to direct the concerned respondent to fill up the vacancies to the posts of Pharmacists (Siddha) sanctioned by the Government as per G.O.Ms.No.41, Health and Family Welfare Department, dated 13.2.2006.

6. It has also been stated that the members of the sixth respondent Association have undergone two year Diploma Course in Indian Systems of Medicine (Siddha) in Government College, Palayamkottai and Arignar Anna Government Hospital, Chennai. Thereafter, they have been inducted in the College based on merits and on stipend within an agreement bond with the Government to serve the Government in the capacity of the Pharmacist for a period of five years from the date of appointment. Thus, the members of the sixth respondent Association, after having successfully completed the Diploma Course, are awaiting their appointment in the Government Hospital.

7. It has been further stated that the Director of Indian Medicine is preparing a panel of persons, who have completed D.Pharm Course, based on the marks obtained in the final year examination, by adopting communal rotation. There are only two Colleges within the State of Tamil Nadu and run by the State Government, with only 100 students upto the year 1995. Thereafter, it was reduced to 15 students per College for the period of 2001 to 2003 and later, the Course had been stopped. Since there are only limited persons, who have completed the Course and their records are being maintained only by the Office of the Special Commissioner of Indian Medicine and Homeopathy, Chennai, their appointment as Pharmacists (Siddha) are done only on the basis of the panel prepared by the second respondent from the candidates, who have completed the D.Pharm Course. Therefore, such recruitment is not done through the Employment Exchange.

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8. It has also been submitted that in respect of Diploma in Pharmacy in the Indian Systems of Medicine (Siddha), there is no provision for registering the qualifications with the Employment Exchange, as there is no separate code available for the said post. Only in respect of Pharmacist (Alopathy), there is a code, namely, 76/20 available with the Employment Exchange. The last recruitment to the posts of Pharmacists (Siddha) was made in the year 1997 and thereafter, there was no appointment till the year 2005, when about 30 posts have been filled up. While so, the Government of Tamil Nadu has opened 149 Indian Systems of Medicine Wings, as per the orders passed by the Government. Hence, the proposals were forwarded to the Government for sanctioning of 149 posts of Pharmacists to be posted in the 149 Indian Systems of Medicine Wings under the control of the Indian Medicines and Homeopathy Department. Accordingly, the orders have been passed by the Government in G.O.Ms.No.41, Health and Family Welfare Department, dated 13.2.2006, sanctioning 149 posts of Pharmacists in the time scale of pay under the control of the second respondent of which 125 posts have been sanctioned for Pharmacists (Siddha). The Government has taken steps to fill up the posts on the basis of the panel prepared by the second respondent as per the seniority list of the candidates, who have passed Diploma in the year 1990. Yearwise seniority list is being prepared by the Department on the basis of the marks obtained by the candidates and by following the communal rotation.

9. It has also been pointed out by the sixth respondent that this Court had passed an interim order, dated 18.8.2006, in M.P.No.1 of 2006, in the present writ petition directing the respondents to keep one post vacant. Even though the said order does not have the effect of stopping the respondents from filling up the remaining vacancies, the entire process has been stopped by the respondents causing irreparable loss and mental agony to the qualified candidates, who are awaiting such appointment.

10. The learned counsel appearing on behalf of the petitioner submits that amendments have been made to the General Rules (Part II) of Tamil Nadu State and Subordinate Services by G.O.Ms.No.605, Personnel and Administrative Reforms, dated 3.6.1980.

11. The said Government Order reads as follows:

> No. SRO B-320/80- In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the general rules (Part II of the Tamil Nadu State and Subordinate Services Rules) in Volume I of the Tamil Nadu Services Manual. 1977:-

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AMENDMENT

In the said rules, after rule 10, the following rule shall be inserted, namely:-

"10-A. Recruitment to posts, which are outside the purview of the Tamil Nadu Public Service Commission-(a) Where the posts are outside the purview of the Tamil Nadu Public Service Commission, recruitment shall be made only by calling for names of eligible candidates from the Employment Exchange. In respect of specialised posts for which candidates are not available with the Employment Exchange, the appointing authority shall get a certificate of non-availability from the Employment exchange and call for applications from eligible candidates by advertising the posts in prominent daily newspapers giving the number of vacancies and indicating the qualifications etc.

(b) The candidates to be appointed shall be selected on the basis of merit by the appointing authority, or by an officer designated by the appointing authority or by a Committee of Officers not exceeding three duly constituted by the appointing authority, subject to the rule of reservation of posts wherever applicable after subjecting the candidates to an oral interview and if necessary, a short written test which can be evaluated in a short time.

Accordingly, the recruitment for filling up the vacancies to the posts of Pharmacists in Siddha Medicine should be done only in accordance with the prescribed rules.

12. The learned Government Advocate, appearing on behalf of the respondents 1 to 5, has pointed out that by the Memorandum No.109424/K/77-4, Health, dated 24.4.1978, issued by the Health and Family Welfare Department it has been informed to the Director of Indian Medicine that there was no objection to the Director to prepare a panel of names for appointment as Pharmacists and to allot those candidates to the various Institutions. It was further stated in the said Memorandum that the panel should be prepared based on the marks obtained by the candidates in the final year examination as is followed in the case of appointment of Assistant Medical Officers and no discrimination should be shown between the stipendiary and non-stipendiary candidates. It was also informed that Rule 22 of the General Rules for the Tamil Nadu State and Subordinate Services is applicable only when this has been specifically applied for particular categories of posts in the special or adhoc rules relating to those posts. The Special Rule relating to Pharmacists in the Tamil Nadu Medical Subordinate services do not contain any provision to the effect

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that the rule of reservation shall apply to this category of post. Therefore, the question of adopting the rule of reservation in preparing the panel of names for appointment as Pharmacists does not arise.

13. It was also pointed out from Branch II-Indigenous Medicine, the Madras Medical Subordinate Service, Madras Service Manual, Volume III, Subordinate Services, 1954, that the posts of Pharmacist-Indigenous Medicine are filled up by direct recruitment or for special reasons, recruitment by transfer from any other services. Therefore, it is submitted that there is no special procedure prescribed by the rules, as to the exact procedures that are to be followed for recruitment to the post of Pharmacist. Further, since the number of candidates available with the necessary qualifications are very few, the long established procedure of preparing a panel by the Director of Indian Medicine and Homeopathy has been followed. The said procedure is reasonable and in accordance with the procedures established by law.

14. On a perusal of the records placed before this Court, it is found that the writ petitioner has come before this Court praying for a writ of Mandamus to direct the respondents to follow a certain procedure, while recruiting the candidates to the posts of Pharmacists in Siddha Medicine. However, it is seen that the writ petitioner has not chosen to challenge the Memorandum No.109424/K/77-4, Health, dated 24.4.1978, issued by the Health and Family Welfare Department or G.O.Ms.No.373, Health and Family Welfare Department, dated 2.6.1995, issued thereafter or the other orders or regulations prescribing the procedures for recruitment that are being followed at present.

15. In such circumstances, this Court is of the considered view that the relief sought for by the petitioner in the present writ petition cannot be granted. However, it is open to the petitioner to challenge the appropriate proceedings issued by the respondents with regard to the recruitment of Pharmacists in Siddha medicine, if so advised.

16. With the above observations, the writ petition is dismissed. No costs. Consequently, connected M.P.No.1 of 2006 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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1 cc To Mr.P.C.N.Raghupathy, Advocate, SR.4974.
1 cc To The Government Pleader, SR.5568.
1 cc To Ms.Malarvizhi Udayakumar, Advocate, SR.5410.

W.P.No.No.23331 OF 2006

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